



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SW FREEWAY SUITE 2200
HOUSTON TX 77027

Carrier's Austin Representative Box
01

Respondent Name

LIBERTY MUTUAL FIRE INSURANCE

MFDR Date Received

NOVEMBER 28, 2007

MFDR Tracking Number

M4-08-2141-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated November 27, 2007: "This patient was admitted to Memorial Hermann Hospital by Dr. Peter J. Yeh to perform a complicated posterior lumbar interbody fusion with instrumentation at L4-5 and laminectomy for decompressions of the spine at L5-S1 as well as l3-l4." "The hospital's unaudited, usual and customary charges shall form the basis for determining the reimbursement method required under the acute care inpatient hospital fee guideline. In this case, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants amounted to \$106,183.50, and exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline. Rule 134.401 (c)(6)." "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges."

Requestor's Supplemental Position Summary Dated November 10, 2011 and November 30, 2011:

"The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method". "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$55,355.59."

Affidavit of Michael C. Bennett dated November 1, 2011: "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital' "The charges reflected on the attached Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital provided medical care and services to this patient who incurred the usual and customary charges in the amount of \$106,183.50 which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

Affidavit of Patricia L. Metzger dated November 21, 2011: "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and extent of injury, the services and procedures performed on this patient were complicated and unusually extensive."

Amount in Dispute: \$55,355.59

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated November 28, 2011: "These services have been reimbursed based upon review and appropriate application of the three-tiered service-related standard per diem amount under 28 TAC Section 134.401 (c) . Any additional reimbursement described in 28 TAC Section 134.401 (c)(4) have been made in accordance with that rule. All charges have been subject to audit as described in 28 TAC Sections 133.301(a) and 134.401 (b)(2)(C). Because the three-tiered, service-related per diem amounts already incorporate complexity and intensity factors, all admission types requiring "fair and reasonable" reimbursement are reimbursed using the appropriate standard per diem amount which meets or exceeds the appropriate reimbursement in relation to the nature, complexity and intensity of the documented admission." "MHHS Hermann Hospital has not provided any rationale that supports their perspective that this constitutes an unusual or complex or extensive hospitalization."

Response Submitted by: Liberty Mutual Insurance Group, 2875 Browns Bridge Road, Gainesville, Georgia 30504

Respondent's Supplemental Position Summary Dated November 30, 2011: "As outlined in the EOBs, Requestor's services exceeded those properly preauthorized per 28 Tex. Lab. Code §134.60. Respondent preauthorized a three-night stay; Requestor billed five days. Those excess charges total \$2,363.25. Respondent requests the Division decline to review any of these charges as the Requestor failed to obtain the requisite preauthorization." Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception. Respondent appropriately issued payment per the standard Texas surgical per diem rate. No additional monies are due to the Requestor

Response Submitted by: Hanna & Plaut, LLP, Attorneys At Law, Southwest Tower, 211 East Seventh Street, Suite 600, Austin, Texas 78701

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
December 6, 2006 through December 11, 2006	Inpatient Hospital Services	\$55,355.59	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.600, *Texas Register* 3566, effective May 2, 2006, requires preauthorization for specific treatments and services.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- Z710 – The charge for this procedure exceeds the fee schedule allowance.
- X170 – Pre-Authorization was required, but not requested for this service per TWCC Rule 134.600.
- Z711 –The charge for this procedure exceeds the customary charges by other providers for this service.
- Z695 – The charges for this hospitalization have been reduced based on the fee schedule allowance.
- 42-Charges exceed our fee schedule or maximum allowable amount.

- 62-Payment denied/reduced for absence of, or exceeded, pre-certification/authorization.

Issues

1. Does a preauthorization issue exist in this dispute?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent denied reimbursement for dates of service December 9, 2006 through December 11, 2006 based upon “X170 – Pre-Authorization was required, but not requested for this service per TWCC Rule 134.600, and 62-Payment denied/reduced for absence of, or exceeded, pre-certification/authorization.”

28 Texas Administrative Code §134.600(q) states “The health care requiring concurrent review for an extension for previously approved services includes: (1) inpatient length of stay.”

On November 22, 2006, the respondent gave preauthorization approval for a three (3) day inpatient stay.

The requestor did not submit a preauthorization report to support that the two additional days for inpatient stay were preauthorized in accordance with 28 Texas Administrative Code §134.600(q)(1). Therefore, a preauthorization issue does exist in this dispute.

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$106,183.50. The Division concludes that the total audited charges exceed \$40,000.
3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals' November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position

statement states that “This patient was admitted to Memorial Hermann Hospital by Dr. Peter J. Yeh to perform a complicated posterior lumbar interbody fusion with instrumentation at L4-5 and laminectomy for decompressions of the spine at L5-S1 as well as l3-L4...In this case, the hospital’s usual and customary charges for room and board, ancillary services, drug charges and implants amounted to \$106,183.50, and exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline. Rule 134.401(c)(6).” This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: “The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method”. “Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$55,355.59.” In support of the requestor’s position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor’s supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

4. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor’s position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was five days; however, documentation supports that the Carrier pre-authorized a length of stay of three days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is \$3,354.00 for the three authorized days.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
 - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$50,675.00.
 - Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement can be recommended.
 - 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (ii) Computerized Axial Tomography (CAT scans) (revenue codes 350-352,359).” A review of the submitted hospital bill finds that the requestor billed \$1,963.50 for revenue code 350-CT Scan, and \$683.00 for revenue code 359-CT Scan Other. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 351 and 359 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
 - 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the

admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$551.00/unit for Sevoflurane and \$393.00 for Thrombin 5MU. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$3,354.00. The respondent issued payment in the amount of \$24,282.04. Based upon the documentation submitted no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	11/30/2012 _____ Date
_____ Signature	_____ Medical Fee Dispute Resolution Manager	11/30/2012 _____ Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service demonstrating that the request has been sent to the other party.***

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.